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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6 ALICE SVENSON,
7 Plaintiff,

8 v.

9 GOOGLE, INC., et al.,
10 Defendants.
11

Case No. 13-cv-04080-BLF

**ORDER DENYING MOTION FOR
STAY OF DISCOVERY**

12
13 In September 2014, Defendants filed a motion to vacate the scheduling order in this case
14 and stay discovery pending disposition of Defendants' motion to dismiss the first amended
15 complaint ("FAC"), which is scheduled for hearing on January 15, 2015. In October 2014, after
16 the motion to vacate and stay was fully briefed, the parties submitted a stipulation and proposed
17 order to vacate the case schedule. The stipulation indicated that the parties agreed that the case
18 schedule, which *inter alia* established a November 26, 2014 cutoff for fact discovery related to
19 class certification, was unworkable in light of the filing of the FAC and the pending motion to
20 dismiss. *See* Stipulation, ECF 96. On October 29, 2014, the Court issued an order approving the
21 parties' stipulation, vacating the case schedule, and setting a case management conference for
22 February 19, 2015.

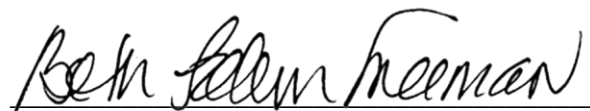
23 To the extent that Defendants still seek a stay of discovery, "[t]he Federal Rules of Civil
24 Procedure do not provide for automatic or blanket stays of discovery when a potentially
25 dispositive motion is pending." *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev. 2011).
26 "Had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. Pro. 12(b)(6)
27 would stay discovery, the Rules would contain a provision to that effect. In fact, such a notion is
28 directly at odds with the need for expeditious resolution of litigation." *Gray v. First Winthrop*

1 Corp., 133 F.R.D. 39, 40 (N.D. Cal. 1990). A district court does have “wide discretion in
2 controlling discovery,” *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988), and that
3 discretion extends to staying discovery upon a showing of “good cause,” *see* Fed. R. Civ. P.
4 26(c)(1)(A). Good cause for staying discovery may exist when the district court is “convinced
5 that the plaintiff will be unable to state a claim for relief.” *Wenger v. Monroe*, 282 F.3d 1068,
6 1077 (9th Cir. 2002) (quoting *Wood v. McEwen*, 644 F.2d 797, 801 (9th Cir. 1981)); *see also*
7 *Tradebay*, 278 F.R.D. at 601 (“Staying discovery when a court is convinced that the plaintiff will
8 be unable to state a claim for relief furthers the goal of efficiency for the court and the litigants.”).
9 Some courts in this district have applied a two-pronged test to determine whether discovery should
10 be stayed, asking first whether a pending motion is potentially dispositive of the entire case (or at
11 least dispositive of the issue as to which discovery is directed), and second whether the pending
12 motion can be decided absent discovery. *See, e.g., Hamilton v. Rhoads*, No. C 11-0227 RMW
13 (PR), 2011 WL 5085504, at *1 (N.D. Cal. Oct. 25, 2011).

14 Defendants have not demonstrated that Plaintiff will be unable to state a claim for relief or
15 that the pending motion to dismiss will terminate this case. While a substantive analysis of the
16 motion would be premature at this time, the Court has taken a “peek” at the motion and
17 determined that the issues presented therein are not so straightforward as to allow a prediction
18 regarding the motion’s likelihood of success. *See Tradebay*, 278 F.R.D. at 602 (“the court
19 deciding the motion to stay must take a ‘preliminary peek’ at the merits of the pending dispositive
20 motion to assess whether a stay is warranted”). Accordingly, the Court in the exercise of its
21 discretion declines to stay discovery at this time. However, while the parties are free to go
22 forward with discovery, the Court encourages them to take into account the pendency of the
23 motion to dismiss and the reality that resources expended on discovery will have been wasted in
24 the event that the motion does dispose of the case.

25 The motion to stay discovery is DENIED.

26 Dated: November 25, 2014



BETH LABSON FREEMAN
United States District Judge